

Agenda Item #23

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

MARINA SLIPS RATEMAKING)	Administrative Cause
HEARING PROCESS)	Number: 03-070P
(FIRST AMENDMENT))	

**RECOMMENDATIONS FOR AMENDMENTS
TO NONRULE POLICY DOCUMENT FOR
RATEMAKING PROCESS FOR
MARINA SLIP RATES AND OTHER SUBJECTS**

Presented for consideration and possible approval are several amendments to the nonrule policy document that governs the public review process for fee increases at resorts and marinas under lease with the Department of Natural Resources. Several subjects are addressed.

The primary impetus for the proposed amendments is that the current nonrule policy document requires consideration of a proposed rate increase during the Commission's August meeting. Since the Commission now typically meets semi-monthly, and may not meet this year or in subsequent years in August, an amendment is needed to allow consideration in September as well.

Other changes are intended to do the following: (1) specify a lessee that seeks an increase to include a justification and comparables with the rate-increase request; (2) allow the hearing officer to hold the hearing anywhere in Marion County, rather than exclusively in Indianapolis; (3) clarify that a lessee seeking a request must notify slip renters of the proposal in person or by first class mail; (4) specify that a lessee provide a listing of those served with an authentication of service, but with the express understanding the lessee may ask the agency to treat the information as containing trade secrets; (5) specify that an interested person may comment to the hearing officer by email; (6) provide the Commission may consider rate petitions either during August or September; (7) authorize the Director of the Division of State Parks and Reservoirs to set interim rates for new facilities; (8) direct its Division of Hearings to place on the Commission's website findings and recommendations in a ratemaking proceeding, if made after August 1, 2003; and, (9) make other mostly technical changes.

Dated: April 28, 2003

Stephen L. Lucas
Director, Division of Hearings

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Information Bulletin #20

(First Amendment)

Ratemaking Process for Resorts and Marinas under Lease with the Department of Natural Resources

1. Purpose

The purpose of this information bulletin is to implement an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the department of natural resources. The process was established by the natural resources commission during a meeting held March 24, 1998 and made applicable to rate increases to become effective in 1999 and in subsequent years. The process was published in the Indiana Register on May 1, 1998 at page 3209 as Information Bulletin #20. **Amendments were made to the information bulletin during the commission meeting held on May 20, 2003, and amendments were made effective July 1, 2003.** The timeframes established by the information bulletin are essential to its effective implementation.

2. Rate Increase Requests

A lessee shall submit its request for a guestroom, slip, or houseboat (if applicable) fee increase to the department of natural resources, division of state parks and reservoirs (the "department") in accordance with the existing lease agreement for the following year by April 1 of the preceding year. **The lessee shall include justification for the increase request along with comparable rates from other marinas.**

3. Processing Rate Increase Requests and Comments

(A) Upon receiving a request, the department will inform the division of hearings of the natural resources commission (the "hearings division"). The hearings division will assign a cause number and, in consultation with the department, select the date and time for a rate hearing to be held in ~~Indianapolis~~ **Marion County**. The department will advise the lessee of the date, time, and location ~~in Indianapolis~~ of the rate hearing, at which time the lessee and affected persons will have the opportunity to provide comments to a hearing officer for the ~~natural resources~~ commission. This hearing will be held in ~~early~~ **June or July** of each year.

(B) By May 30, the lessee ~~shall notify by~~ **must provide written notice, by personal delivery or U.S. first class mail, to each slip renter or buoy renter** that the lessee is requesting a rate increase. The lessee shall include the time, date, and location ~~in Indianapolis~~ of the rate hearing. This notice shall include the proposed new rates. The notice shall also advise the renter of the opportunity to provide ~~written~~ comments to the hearing officer, **either by U.S. first class mail or electronic mail. Before the public hearing, the lessee must provide the hearings division with a listing that includes the names and addresses of persons notified under this paragraph. The lessee shall, by affidavit or affirmation, authenticate that all addressees were served as**

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indicated in the listing. If the lessee asserts the listing contains trade secrets, the Uniform Trade Secrets Act (IC 24-2-3) applies.

(C) Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate increase request shall be made available for the public to review at the lessee's business office, during normal business hours. A copy will be available for review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, IN 46204. **The listing of persons notified required in paragraph (B) is not governed by this paragraph.**

(D) Affected persons may send written comments concerning the proposed rate increase to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, IN 46204. **Email comments may also be submitted to the hearing officer. The email address will be provided in the letter sent by the lessee to the affected parties by May 30.**

(E) In accordance with the existing lease agreements, the department will analyze comparable facilities to compare rates with those sought by the lessee. Results of that analysis will be presented at the rate hearing conducted by the hearing officer. Information used in this analysis will also be available for inspection at the division of state parks and reservoirs office in Indianapolis.

4. Public Hearing and Presentation to Commission

Affected persons may attend the rate hearing and provide oral or written statements.

The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The administrative orders and procedures act (IC 4-21.5) does not apply, but **the commission delegates authority to the hearing officer** ~~is delegated full authority by the natural resources commission to implement~~ **under IC 14-11-1-3 and to make any reasonable orders as may be reasonable in implementing the purpose of to implement** this information bulletin.

The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request for rate increase. Following the completion of the review, the hearing officer shall make a written report to the natural resources commission. The report shall include written findings with respect to the requested rate increase and a proposal to the commission for recommendations to the U.S. Army Corps of Engineers. ~~A copy of the report shall also be forwarded by~~ **The hearing officer shall also forward a copy of the report** to the lessee, the department, and any other person who requests a copy.

The hearing officer ~~will~~ **shall** present the findings and recommendations to the natural resources commission during a meeting to be held in August **or September**. During that meeting, the commission ~~will~~ **shall** either recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the lessee. Recommendation for favorable consideration of a rate increase

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~~will~~ **shall** not be withheld unless, in the opinion of the commission, fees submitted exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

5. Recommendation by Commission and Final Action by Army Corps

The commission's secretary shall memorialize the commission's recommendations in writing. Within seven (7) days after the commission ~~makes its recommendation~~ **meeting**, the department ~~will~~ **shall** forward the recommendation to the District Engineer of the U.S. Army Corps of Engineers for final action. ~~Any rate increase will not be~~ **No rate increase is** effective until the lessee receives a letter of approval noting both the recommendation by the ~~natural resources~~ commission and the approval of a rate increase by the U.S. Army Corps of Engineers.

6. Interim Rate Adjustments or Clarifications

The commission delegates authority to the director of the division of state parks and reservoirs to approve interim rate adjustments for projects or slips not addressed in this process due to new construction or modification of existing facilities. The rates apply only until the next rate request cycle, however, when a lessee must present a petition for rate approval as provided in this information bulletin.

7. Index of Commission Findings and Recommendations

The hearings division is directed to index, and place on the commission's website, findings and recommendations made under this information bulletin after August 1, 2003. To promote equity and consistency, the department and the commission may consider these indexed findings and recommendations as precedents.